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BILL TEXT

CHAPTERED

CHAPTER 491

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INTRODUCED BY Assembly Member Nation

FEBRUARY 14, 2003

An act to amend Sections 71200, 71201, 71201.5, 71202, 71203, 71204, 71205, 71206, 71207, 71211, 71212, 71213, 71215, 71216, and 71271 of, to amend the headings of Chapter 4 (commencing with Section 71215) of, and Chapter 5 (commencing with Section 71216) of, Division 36 of, to add Sections 71201.7, 71204.2, 71204.3, 71204.5, 71204.7, 71204.9, 71210.5, and 71217 to, and to repeal and add Section 71210 of, the Public Resources Code, and to amend Sections 44000, 44005, 44007, and 44008 of the Revenue and Taxation Code, relating to vessels.

LEGISLATIVE COUNSEL'S DIGEST

AB 433, Nation. Vessels: release of nonindigenous species.

(1) Existing law generally requires the master, operator, or person in charge of a vessel to employ prescribed ballast water management practices for ballast water carried into the waters of the state from areas outside the exclusive economic zone, as defined, in order to minimize the uptake and release of nonindigenous species. Those persons are also required to maintain specified information on board the vessel and provide this information to the State Lands Commission. Existing law imposes civil penalties upon a person who fails to comply with the prescribed ballast water management practices.

Existing law requires the commission to take samples of ballast water and sediment and to take other actions to assess the compliance of any vessel with these requirements. Existing law prohibits any

state agency from imposing different requirements prior to January 1, 2004, unless otherwise required by federal law. Existing law requires the commission, the State Water Resources Control Board, and the Department of Fish and Game to conduct prescribed research and make related reports. Existing law requires the commission to establish fees not to exceed \$1,000 per vessel and requires that money, and money collected for civil penalties, to be deposited into the Exotic Species Control Fund. Existing law requires the State Board of Equalization to collect the vessel fees, pursuant to the Ballast Water Management Fee Law.

Existing law repeals these provisions as of January 1, 2004.

This bill would revise and recast the state's law pertaining to control of nonindigenous species and ballast water management, including revising and adding definitions. The bill would delete exemptions for specified vessels from compliance with the act and revise the qualification for the vessels subject to the act. The bill would impose additional requirements upon vessel masters, owners, operators, and persons in charge of vessels, to prevent the introduction of nonindigenous species into waters of the state or waters that may impact the waters of the state.

The bill would require the master, owner, operator, or person in charge of specified vessels to retain, and make available to the State Lands Commission, additional information, including a separate ballast water log to outline ballast water management activities for each ballast water tank on board the vessel.

The bill would require the State Lands Commission to take samples from at least 25% of arriving vessels subject to nonindigenous species control requirements.

The bill would prohibit prior to January 1, 2010, other state agencies, boards, commissions, or departments from imposing additional requirements on the discharge or release of ballast water and other vectors of nonindigenous species from vessels subject to the bill's requirements, unless that action is mandated by federal law.

The bill would require the State Lands Commission and the Department of Fish and Game, in consultation with other state and federal agencies and interested persons, to make specified studies and reports and to submit the studies and reports to the Legislature.

The bill would rename the Exotic Species Control Fund the Marine Invasive Species Control Fund, and the Ballast Water Management Fee Law the Marine Invasive Species Fee Collection Law.

The bill would expand the persons to whom civil liability may apply and would make specified violations of the act a misdemeanor, thereby imposing a state-mandated local program by creating a new crime. The bill would provide an administrative procedure for

imposing civil liability and appealing from that imposition. In lieu of the administrative procedure the bill would authorize the Attorney General, at the request of the State Lands Commission, to bring an action in superior court for injunctive relief or civil penalties, as specified.

The bill would delete the 2004 repeal date of the provisions, and extend it until January 1, 2010.

The bill would require the State Lands Commission to adopt any regulations necessary to implement the act, and other specified regulations regarding ballast water management.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 71200 of the Public Resources Code is amended to read:

71200. Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) "Ballast water" means any water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) "Board" means the State Water Resources Control Board.

(d) "Coastal waters" means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep, and rivers, lakes, or other water bodies navigably connected to the ocean.

(e) "Commission" means the State Lands Commission.

(f) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles.

(g) "Exchange" means to replace the water in a ballast tank using either of the following methods:

(1) "Flow through exchange," which means to flush out ballast water by pumping three full volumes of mid-ocean water through the tank, continuously displacing water from the tank, to minimize the

number of original coastal organisms remaining in the tank.

(2) "Empty/refill exchange," which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with mid-ocean waters.

(h) "Mid-ocean waters" means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(i) "Nonindigenous species" means any species, including, but not limited to, the seeds, eggs, spores, or other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its historic range, including any of those organisms transferred from one country into another.

(j) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California. The commission may modify these boundaries through regulation if the proponent for the boundary modification presents substantial scientific evidence that the proposed modification is equally or more effective at preventing the introduction of nonindigenous species through vessel vectors as the boundaries described herein.

(k) "Person" means any individual, trust, firm, joint stock company, business concern, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. "Person" also means any city, county, city and county, district, commission, the state, or any department, agency, or political subdivision of the state, any interstate body, or the United States and its agencies and instrumentalities, to the extent permitted by law.

(l) "Sediments" means any matter settled out of ballast water within a vessel.

(m) "Waters of the state" means any surface waters, including saline waters, that are within the boundaries of the state.

(n) "Vessel" means a vessel of 300 gross registered tons or more.

(o) "Voyage" means any transit by a vessel destined for any California port or place from a port or place outside of the coastal waters of the state.

SEC. 2. Section 71201 of the Public Resources Code is amended to read:

71201. (a) This division applies to all vessels, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in Section 71202.

(b) This division applies to all ballast water and associated sediments taken on a vessel.

(c) This division may be known, and may be cited, as the "Marine Invasive Species Act."

(d) The Legislature finds and declares that the purpose of this division is to move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state, based on the best available technology economically achievable. This division shall be implemented in accordance with this intent, except as expressly provided by this division.

SEC. 3. Section 71201.5 of the Public Resources Code is amended to read:

71201.5. This division does not authorize the discharge of oil, noxious liquids, or other pollutants, in a manner prohibited by state, federal, or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

SEC. 4. Section 71201.7 is added to the Public Resources Code, to read:

71201.7. The commission shall adopt regulations necessary to implement this division, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 5. Section 71202 of the Public Resources Code is amended to read:

71202. This division does not apply to any of the following vessels:

(a) A vessel of the armed forces, as defined in paragraph (14) of subsection (a) of Section 1322 of Title 33 of the United States Code that is subject to the "Uniform National Discharge Standards for Vessels of the Armed Forces" pursuant to subsection (n) of Section 1322 of Title 33 of the United States Code.

(b) A vessel in innocent passage, which is a foreign vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States, and that does not discharge ballast water into the waters of the state, or into waters that may impact waters of the state.

SEC. 6. Section 71203 of the Public Resources Code is amended to read:

71203. (a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.

(b) (1) The master, operator, or person in charge of a vessel is

not required by this division to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(2) If a determination described in paragraph (1) is made, the master, operator, or person in charge of the vessel shall take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel to minimize the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact waters of the state.

(c) Nothing in this division relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

SEC. 7. Section 71204 of the Public Resources Code is amended to read:

71204. Subject to Section 71203, the master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water, that operates in the waters of the state shall do all of the following to minimize the uptake and the release of nonindigenous species:

(a) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the state.

(b) Minimize the discharge or uptake of ballast water in areas within, or that may directly affect, marine sanctuaries, marine preserves, marine parks, or coral reefs.

(c) Minimize or avoid uptake of ballast water in all of the following areas and circumstances:

(1) Areas known to have infestations or populations of nonindigenous organisms and pathogens.

(2) Areas near a sewage outfall.

(3) Areas for which the master, owner, operator, or person in charge of a vessel has been informed of the presence of toxic algal blooms.

(4) Areas where tidal flushing is known to be poor or in turbid waters.

(5) In darkness when bottom-dwelling organisms may rise up in the water column.

(6) Areas where sediments have been disturbed, such as near dredging operations or where propellers may have recently stirred up the sediment.

(d) Clean the ballast tanks regularly in mid-ocean waters, or under controlled arrangements at port or in drydock, to remove sediments, and dispose of the sediments in accordance with local,

state, and federal law.

(e) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.

(f) Remove fouling organisms from hull, piping, and tanks on a regular basis, and dispose of any removed substances in accordance with local, state, and federal law.

(g) Provide access to the commission, upon request, for sampling of ballast intake and discharge.

(h) Maintain a ballast water management plan that was prepared specifically for the vessel and that shall, upon request, be made available to the commission for inspection and review. This plan shall be specific to each vessel and shall provide, at a minimum, a description of the ballast water management strategy for the vessel that is sufficiently detailed to allow a master or other appropriate ship's officer or crew member serving on that vessel to understand and follow the ballast water management strategy.

(i) Train the master, operator, person in charge, and those members of the crew who have responsibilities under the vessel's ballast water management plan, on the application of ballast water and sediment management and treatment procedures, as well as procedures described in this section, in order to minimize other releases of nonindigenous species from vessels.

SEC. 8. Section 71204.2 is added to the Public Resources Code, to read:

71204.2. Prior to and until the date of implementation of the regulations described in Section 71204.5, and subject to Section 71203, the master, operator, or person in charge of a vessel that arrives at a California port or place from a port or place outside of the EEZ shall employ at least one of the following ballast water management practices:

(a) Exchange the vessel's ballast water in mid-ocean waters, before entering the waters of the state.

(b) Retain all ballast water on board the vessel.

(c) (1) Discharge the ballast water at the same location where the ballast water originated, provided that the master, operator, or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water taken on in an area other than mid-ocean waters.

(2) For purposes of this subdivision, "same location" means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port or place, at which the ballast water to be discharged was loaded.

(d) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in

removing or killing nonindigenous species.

(e) Discharge the ballast water to a reception facility approved by the commission.

(f) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

SEC. 9. Section 71204.3 is added to the Public Resources Code, to read:

71204.3. Commencing on the date of implementation of the regulations described in Section 71204.5, and subject to Section 71203, the master, operator, or person in charge of a vessel that arrives at a California port or place from a port or place outside of the Pacific Coast Region shall employ at least one of the following ballast water management practices:

(a) Exchange the vessel's ballast water in mid-ocean waters, before entering the coastal waters of the state.

(b) Retain all ballast water on board the vessel.

(c) (1) Discharge the ballast water at the same location where the ballast water originated, provided that the master, operator, or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water taken on in an area other than mid-ocean waters.

(2) For purposes of this subdivision, "same location" means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port or place, at which the ballast water to be discharged was loaded.

(d) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.

(e) Discharge the ballast water to a reception facility approved by the commission.

(f) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

SEC. 10. Section 71204.5 is added to the Public Resources Code, to read:

71204.5. (a) On or before January 1, 2005, the commission shall adopt regulations governing ballast water management practices for vessels arriving at a California port or place from a port or place within the Pacific Coast Region. The commission shall consider vessel design and voyage duration in developing these regulations. The regulations shall be based on the best available technology



economically achievable and shall be designed to protect the waters of the state. The regulations shall include, as appropriate, restrictions or prohibitions on discharge of ballast water containing nonindigenous species into areas in and outside estuaries and into ocean areas shown to have a capacity to retain organisms.

(b) Subject to Section 71203, and commencing no later than July 1, 2005, the master, operator, or person in charge of a vessel arriving at a California port or place from a port or place within the Pacific Coast Region shall comply with these regulations.

SEC. 11. Section 71204.7 is added to the Public Resources Code, to read:

71204.7. (a) On or before July 1, 2005, the commission, in consultation with the United States Coast Guard, shall adopt regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems.

(b) The regulations shall include criteria for the development of a formal application package to use those systems.

(c) If an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves that application, the commission may subsequently deem the system to be in compliance with any future treatment standard adopted, for a period not to exceed five years from the date that the standard is adopted.

(1) A system approval on a particular vessel may be extended for an additional period not to exceed five years, at the discretion of the commission. That extension may be renewed for additional periods not to exceed five years each, if the owner or operator demonstrates that the system is at least as effective as existing systems in its ability to kill, inactivate, or otherwise remove nonindigenous species from ballast water.

(2) The commission may rescind its approval of the system at any time if the commission, in consultation with the board and the United States Coast Guard, and after an opportunity for administrative appeal with the executive officer of the commission, determines that the system has not been operated in accordance with conditions in the agreed upon application package, or that there exists a serious deficiency in performance, human safety, or environmental soundness relative to anticipated performance.

(d) The commission may not approve an experimental ballast water treatment system unless the owner or operator demonstrates that the system has significant potential to improve upon the ability of existing systems to kill, inactivate, or otherwise remove nonindigenous species from ballast water.

SEC. 12. Section 71204.9 is added to the Public Resources Code, to read:

71204.9. (a) (1) On or before January 31, 2006, the commission,

in consultation with the board and in consideration of the advisory panel recommendations described in subdivision (b), shall submit to the Legislature and make available to the public, a report that recommends specific performance standards for the discharge of ballast water into the waters of the state, or into waters that may impact waters of the state. The performance standards shall be based on the best available technology economically achievable and shall be designed to protect the beneficial uses of affected, and potentially affected, waters. If the commission, based on the best available information, and in consultation with the board and in consideration of the advisory panel recommendations, determines that it is technologically and economically achievable to prohibit the discharge of nonindigenous species, the commission shall include this recommendation in the report to the Legislature.

(2) As appropriate, the commission may recommend different performance standards for vessels arriving from mid-ocean waters, for vessels that travel exclusively within the Pacific Coast Region, for new or existing vessels, or for different vessel types. Each set of performance standards shall be based on the best available technology economically achievable for the described category of vessel.

(b) (1) The commission shall convene and consult with an advisory panel in developing the report required by subdivision (a). The advisory panel shall be comprised of persons concerned with performance standards for the discharge of treated ballast water. The advisory panel shall include, but not be limited to, representatives from one or more California regional water quality control boards, the Department of Fish and Game, the United States Coast Guard, the United States Environmental Protection Agency, and persons representing shipping, port, conservation, fishing, aquaculture, agriculture, and public water agency interests. The commission shall ensure that the advisory panel meets in a manner that facilitates the effective participation of both the public and panel members.

(2) The advisory panel shall make recommendations regarding the content, issuance, and implementation of the performance standards to the commission.

(3) (A) The advisory panel's meetings shall be open to the public.

(B) The commission shall provide notice of the advisory panel's meetings to any person who requests that notice in writing, as well as on the commission's Web site. The commission shall provide that notice at least 10 days before an advisory panel meeting and shall include a brief general description of the meeting's agenda and the name, address, and telephone number of a person who can provide additional information before the meeting.

(4) The advisory panel shall submit its recommendations to the commission on or before July 1, 2005.

SEC. 13. Section 71205 of the Public Resources Code is amended to read:

71205. (a) (1) The master, owner, operator, agent, or person in charge of a vessel carrying, or capable of carrying, ballast water, that visits a California port or place, shall provide the information described in subdivision (c) in electronic or written form to the commission upon the vessel's departure from each port or place of call in California.

(2) The information described in subdivision (c) shall be submitted using a form developed by the United States Coast Guard.

(b) If the information submitted in accordance with this section changes, an amended form shall be submitted to the commission upon the vessel's departure from each port or place of call in California.

(c) (1) The master, owner, operator, or person in charge of the vessel shall maintain on board the vessel, in written or electronic form, records that include all of the following information:

(A) Vessel information, including all of the following:

(i) Name.

(ii) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(iii) Vessel type.

(iv) Owner or operator.

(v) Gross tonnage.

(vi) Call sign.

(vii) Port of Registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water onboard, total number of ballast water tanks, capacity of each ballast water tank, and total number of ballast water tanks in ballast, using measurements in metric tons (MT) and cubic meters (m<sup>3</sup>).

(D) Ballast water management information, including all of the following:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.

(iii) Whether the vessel has a ballast water management plan and

International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(iv) Whether the master, operator, or person in charge of the vessel has claimed a safety exemption pursuant to paragraph (1) of subdivision (b) of Section 71203 for the vessel voyage, and the reason for asserting the applicability of that paragraph.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height at time of exchange if exchange is conducted, of any ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

(G) Certification of accurate information, which shall include the printed name, title, and signature of the master, owner, operator, person in charge, or responsible officer attesting to the accuracy of the information provided and certifying compliance with the requirements of this division.

(H) Changes to previously submitted information.

(2) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a signed copy of the information described in this subdivision on board the vessel for two years.

(d) The master, owner, operator, or person in charge of a vessel subject to this division shall retain for two years a separate ballast water log outlining ballast water management activities for each ballast water tank on board the vessel and shall make the separate ballast water log available to the commission for inspection and review.

SEC. 14. Section 71206 of the Public Resources Code is amended to read:

71206. (a) The commission, in coordination with the United States Coast Guard, shall take samples of ballast water and sediment from at least 25 percent of the arriving vessels subject to this division, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this division. The

commission shall provide to the board copies of all sampling results.

(b) The master, owner, operator, or person in charge of a vessel subject to this division shall make available to the commission, upon request of that commission, the records required by Section 71205.

(c) The commission, in coordination with the United States Coast Guard, shall compile the information obtained from submitted reports. The information shall be used, in conjunction with existing information relating to the number of vessel arrivals, to assess vessel reporting rates and compliance with the requirements of this division.

SEC. 15. Section 71207 of the Public Resources Code is amended to read:

71207. (a) This division describes the state program to regulate the discharge or release of ballast water and other vectors of nonindigenous species from vessels regulated pursuant to this division. Prior to January 1, 2010, a state agency, board, commission, or department shall not impose a requirement, pertaining to the discharge or release of ballast water and other vectors of nonindigenous species from a vessel regulated pursuant to this division, that is different from the requirements set forth in this division, unless that action is mandated by federal law.

(b) Nothing in this division restricts state agencies from enforcing this division.

(c) Any person violating this division is subject to civil and criminal liability in accordance with Chapter 5 (commencing with Section 71216).

(d) The commission may require any vessel operating in violation of this division to depart the waters of the state and exchange, treat, or otherwise manage the ballast water at a location determined by the commission, unless the master determines that the departure or exchange would threaten the safety or stability of the vessel, its crew, or its passengers.

SEC. 16. Section 71210 of the Public Resources Code is repealed.

SEC. 17. Section 71210 is added to the Public Resources Code, to read:

71210. (a) The commission, in consultation with the board, the United States Coast Guard, and a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives, shall sponsor a pilot program for the purpose of evaluating alternatives for treating and otherwise managing ballast water. The goal of this effort shall be the reduction or elimination of the discharge of nonindigenous species into the coastal waters of the state or into waters that may impact coastal waters of the state. Whenever possible, the pilot

programs shall include funding from federal grants and appropriations, vendor funding, and state bond funds, including, but not limited to, bond funds from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. Priority shall be given to projects to test and evaluate treatment technologies that can be used to prevent the introduction and spread of nonindigenous aquatic species into coastal waters of the state by ship-mediated vectors.

(b) The commission shall provide biennial summaries to the Legislature and the public, beginning on or before January 31, 2005, of the results of the pilot programs conducted pursuant to this section. These summary reports shall include, but not be limited to, a description of the projects, the relative effectiveness of the technologies examined in minimizing the discharge of nonindigenous species, and the costs of implementing the technologies.

SEC. 18. Section 71210.5 is added to the Public Resources Code, to read:

71210.5. The commission, in consultation with the board, the United States Coast Guard, and a technical advisory group made up of interested persons including, but not limited to, shipping and port representatives, shall prepare an analysis of the vectors, other than ballast water, and relative risks of those vectors, for release of nonindigenous species from vessels. This analysis shall include, but not be limited to, the release of nonindigenous species from vessel hulls, sea chests, sea suction grids, other hull apertures, in-water propellers, chains, anchors, piping and tanks. The commission shall prepare a report summarizing the results of this analysis and recommending action to reduce the discharge of nonindigenous species from vessel vectors other than ballast water. The commission shall submit the report to the Legislature and make it available to the public on or before March 1, 2006.

SEC. 19. Section 71211 of the Public Resources Code is amended to read:

71211. (a) (1) The Department of Fish and Game, in consultation with the commission and the United States Coast Guard, shall collect data necessary to establish and maintain an inventory of the location and geographic range of nonindigenous species populations in the coastal and estuarine waters of the state that includes open coastal waters and bays and estuaries. In particular, data shall be collected that does both of the following:

(A) Supplements the existing baseline of nonindigenous species previously developed pursuant to this section, by adding data from investigations of intertidal and nearshore subtidal habitats along the open coast.

(B) Monitors the coastal and estuarine waters of the state, including, but not limited to, habitats along the open coast, for new

introductions of nonindigenous species or spread of existing nonindigenous species populations.

(2) Whenever possible, the study shall utilize appropriate, existing data, including data from previous studies made pursuant to this section. The Department of Fish and Game shall make the inventory and accompanying analysis available to the public through the Internet on or before January 1, 2007, and shall provide to the public an update of that inventory no later than July 1, 2008.

(b) (1) The Department of Fish and Game, in consultation with the commission and the United States Coast Guard, shall assess the effectiveness of the ballast water controls implemented pursuant to this division by comparing the status and establishment of nonindigenous species populations, as determined from the data collected pursuant to subdivision (a), with the baseline data collected pursuant to this division and submitted in a report to the Legislature in 2003.

(2) Whenever possible, this research shall utilize appropriate, existing data.

(3) The Department of Fish and Game shall submit a report presenting its assessment to the Legislature and the public on or before January 1, 2009.

(c) Information generated by the research conducted pursuant to this section shall be of the type and in a format useful for subsequent studies and reports undertaken for any of the following purposes:

(1) The determination of alternative discharge zones.

(2) The identification of environmentally sensitive areas to be avoided for uptake or discharge of ballast water.

(3) The long-term effectiveness of discharge control measures.

(4) The determination of potential risk zones where uptake or discharge of ballast water shall be prohibited.

(5) The rate and risk of establishment of nonindigenous species in the coastal waters of the state, and resulting impacts.

SEC. 20. Section 71212 of the Public Resources Code is amended to read:

71212. On or before January 31, 2005, and updated biennially, the commission, in consultation with the board, the Department of Fish and Game, and the United States Coast Guard, shall submit to the Legislature, and make available to the public, a report that includes, but is not limited to, all of the following:

(a) A summary of the information provided in the ballast water discharge report forms submitted to the commission, including the volumes of ballast water exchanged, volumes discharged into state waters, types of ballast water treatment, and locations at which ballast water was loaded and discharged.

(b) Monitoring and inspection information collected by the

commission pursuant to this division, including a summary of compliance rates, categorized by geographic area and other groupings as information allows.

(c) An analysis of the monitoring and inspection information, including recommendations for actions to be undertaken to improve the effectiveness of the monitoring and inspection program.

(d) An evaluation of the effectiveness of the measures taken to reduce or eliminate the discharge of nonindigenous species from vessels, including recommendations regarding action that should be taken to improve the effectiveness of those measures.

(e) A summary of the research completed during the two-year period that precedes the release of the report, and ongoing research, on the release of nonindigenous species by vessels.

SEC. 21. Section 71213 of the Public Resources Code is amended to read:

71213. The commission, the board, and the Department of Fish and Game, in consultation with interested stakeholders, shall identify and conduct any other research determined necessary to carry out the requirements of this division. The research may relate to the transport and release of nonindigenous species by vessels, the methods of sampling and monitoring of the nonindigenous species transported or released by vessels, the rate or risk of release or establishment of nonindigenous species in the waters of the state and resulting impacts, and the means by which to reduce or eliminate a release or establishment. The research shall focus on assessing or developing methodologies for treating or otherwise managing ballast water to reduce or eliminate the discharge or establishment of nonindigenous species.

SEC. 22. The heading of Chapter 4 (commencing with Section 71215) of Division 36 of the Public Resources Code is amended to read:

#### CHAPTER 4. MARINE INVASIVE SPECIES CONTROL FUND

SEC. 23. Section 71215 of the Public Resources Code is amended to read:

71215. (a) (1) The Marine Invasive Species Control Fund is hereby created. The money in the fund, upon appropriation by the Legislature, shall be used solely to carry out this division.

(2) All money accruing to the Exotic Species Control Fund shall be transferred to the Marine Invasive Species Control Fund.

(b) (1) The commission shall administer the fund in accordance with this chapter.

(2) The commission shall establish, through regulation, a reasonable and appropriate fee solely for the purposes of carrying out this division. The fee may not exceed one thousand dollars (\$1,000) for each voyage, as described in subdivision (c). This



amount may be adjusted for inflation every two years.

(3) In establishing fees, the commission shall consult with a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives.

(4) The commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

(c) The State Board of Equalization, in accordance with Part 22.5 (commencing with Section 44000) of Division 2 of the Revenue and Taxation Code, shall collect the fee from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.

(d) Notwithstanding any other provision of law, all fees imposed pursuant to this section shall be deposited into the Marine Invasive Species Control Fund.

(e) Notwithstanding any other provision of law, all penalties and payments collected for violations of any requirements of this division shall be deposited into the Marine Invasive Species Control Fund.

SEC. 24. The heading of Chapter 5 (commencing with Section 71216) of Division 36 of the Public Resources Code is amended to read:

#### CHAPTER 5. CIVIL AND CRIMINAL PENALTIES AND LIABILITY

SEC. 25. Section 71216 of the Public Resources Code is amended to read:

71216. (a) Except as provided in subdivision (b) or (c), any person who intentionally or negligently fails to comply with the requirements of this division may be liable for an administrative civil penalty in an amount which may not exceed five thousand dollars (\$5,000) for each violation. Each day of a continuing violation constitutes a separate violation.

(b) Any person who fails to comply with the reporting requirements set forth in Section 71205 may be liable for an administrative civil penalty in an amount which may not exceed five hundred dollars (\$500) per violation. Each day of a continuing violation constitutes

a separate violation.

(c) Any person who, knowingly and with intent to deceive, falsifies a ballast water control report form, or knowingly and with intent to deceive, tampers with or disables a system for controlling the release of nonindigenous species, required by this division, may be liable for an administrative civil penalty in an amount which may not exceed five thousand dollars (\$5,000) per violation. Each day of a continuing violation constitutes a separate violation.

(d) The executive officer of the commission may issue a complaint to any person on whom civil liability may be imposed pursuant to this division. The complaint shall allege the facts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing. A person served with a complaint pursuant to this subdivision may, within 30 days after service of the complaint, request a hearing by filing with the executive officer a notice of defense, as described in Section 11506 of the Government Code. A notice of defense is deemed to be filed within the 30-day period if it is postmarked within the 30-day period. If a hearing is requested by the person, it shall be conducted within 30 days after the executive officer receives the notice of defense. If no notice of defense is filed within 30 days after service of the complaint, the executive officer shall issue an order setting liability in the amount proposed in the complaint unless the executive officer and the person have entered into a settlement agreement, in which case the executive officer shall issue an order setting liability in the amount specified in the settlement agreement. If the person has not filed a notice of defense or if the executive officer and the person have entered into a settlement agreement, the order may not be subject to review by a court or agency.

(e) A hearing required under this section shall be conducted by an independent hearing officer, in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment, and the violator's ability to pay the proposed civil penalty. After conducting a hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount, if any, of the civil penalty to be imposed.

(f) Orders setting civil liability and issued pursuant to this

section are effective and final upon issuance. The violator shall pay any penalty within 30 days of service, unless he or she seeks judicial review pursuant to subdivision (g), in which case he or she shall pay any penalty within 30 days of service of the court's order setting civil liability. Copies of the orders shall be served by personal service or by certified mail upon the person served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(g) Within 30 days after service of a copy of a decision issued by the hearing officer that the person served is liable for a civil penalty, a person so served may file a petition for writ of mandate for review of the decision pursuant to Section 11523 of the Government Code. A person who fails to file the petition within the 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate may not stay any corrective action required pursuant to this act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) An order for administrative penalties entered pursuant to this section shall be subject to interest at the legal rate from the filing date of the complaint as specified in subdivision (d).

(i) A provision of this chapter or a ruling of the executive officer may not be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the executive officer, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin a violation of this division, seek necessary remedial action by a person who violates this division, or seek civil and criminal penalties against a person who violates this division.

(j) In lieu of a complaint under subdivision (d) to impose administrative civil penalties set forth in subdivisions (a), (b), and (c), the Attorney General, at the request of the commission, may bring an action in superior court, in the name of the People of the State of California, to enjoin a violation of this division, seek necessary remedial action by a person who violates this division, or seek civil penalties in the amounts set forth in subdivisions (a), (b), and (c).

SEC. 26. Section 71217 is added to the Public Resources Code, to

read:

71217. A person who violates subdivision (c) of Section 71216 is guilty of a misdemeanor, and is punishable by imprisonment in the county jail for not more than one year.

SEC. 27. Section 71271 of the Public Resources Code is amended to read:

71271. This division shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date. If a federal program and regulations similar to the program and regulations developed pursuant to this division are established and implemented prior to January 1, 2010, the commission shall submit a report to the Legislature within eight months of the implementation of the federal program. The report shall compare the federal program with the program described in this division and make a finding as to the federal program's relative effectiveness in preventing the introduction of marine invasive species from vessels visiting California. The commission shall recommend repeal of the program described in this division only if it finds that the federal program is equally or more effective at implementing and funding effective controls on the release of aquatic invasive species into the waters of the state than the program described in this division.

SEC. 28. Section 44000 of the Revenue and Taxation Code is amended to read:

44000. This part shall be known, and may be cited, as the Marine Invasive Species Fee Collection Law.

SEC. 29. Section 44005 of the Revenue and Taxation Code is amended to read:

44005. Except as authorized in Section 44006, the fee imposed on owners or operators of vessels pursuant to Section 71215 of the Public Resources Code is due and payable to the board 30 days from the date of assessment by the board or the board's agent.

SEC. 30. Section 44007 of the Revenue and Taxation Code is amended to read:

44007. All fees, interest, and penalties imposed and all fees required to be paid to the state pursuant to Section 71215 of the Public Resources Code shall be paid in the form of remittances payable to the board. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Marine Invasive Species Control Fund.

SEC. 31. Section 44008 of the Revenue and Taxation Code is amended to read:

44008. This part shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends

that date; provided, however, this part shall remain applicable for the collection of assessments, the liability for which accrued prior to January 1, 2010; the making of any refunds and the effecting of any credits; the disposition of money collected; and the commencement of any action or proceeding pursuant to this part.

SEC. 32. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.